

**REMARKS**

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

**I. EXAMINER INTERVIEW, CLAIM STATUS & AMENDMENTS**

Claims 1-15 were pending in this application when last examined.

Claims 1-8 were examined on the merits and stand rejected.

Claims 9-15 were withdrawn as non-elected subject matter.

Applicants thank Examiner Kosar for the telephone interview on November 15, 2005 and the follow-up telephone discussion on May 19, 2006. During the interview, the Examiner proposed amendments to place the application in condition for allowance.

Specifically, the Examiner proposed amending claim 1 to replace "a peptide having. . ." with "a peptide consisting of. . ." before both SEQ ID NOS 1 & 2. It was agreed that non-elected SEQ ID NO: 2 will be rejoined with elected SEQ ID NO: 1, which is free of the art. It was noted that such an amendment places claim 1 in condition for allowance. Claim 1 has been so amended. Support can be found in the claim as filed.

The Examiner proposed amending claim 7 to depend on claim 6, and not on claim 1. Claim 7 has been so amended. Claim 7 has also been amended to clarify that the total peptide concentration is 2 - 20 wt%. Support can in the claim as filed.

The Examiner proposed amending claim 9 to replace "a method for preventing, ameliorating or improving . . ." with "a method of treating" and he proposed amending claim 15 to replace "a method to preserve/support" with "a method of supporting." It was also noted that withdrawn claims 9 and 15 would rejoined with the elected invention, if the claims were amended as suggested. Claims 9 and 15 have been so amended. Support can be found in the claims as filed and Example 7 on page 18. Kindly rejoin withdrawn claims 9 and 15 with the elected invention.

The Examiner also proposed canceling claims 10-14. Claims 10-14 have been canceled without prejudice or disclaimer thereto. Applicants reserve the right to file a continuation or divisional application on any canceled subject matter.

No new matter has been added by this amendment to the claims.

Claims 1-9 and 15 are pending upon entry of this amendment.

## **II. NON-STATUTORY SUBJECT MATTER**

On page 2 of the Office Action, claim 1-5 were rejected under 35 U.S.C. § 101 on the basis that the claims are directed to non-statutory subject matter for reading on products of nature, such as a chicken, a human, a sea urchin, a pig, Atlantic cod, a mouse, a blue crab, and a fruit fly.

During the telephone discussions with the Examiner, it was indicated that the proposed amendment to claim 1 should overcome this rejection. Thus, it is respectfully submitted that the present amendment overcomes this rejection as the amended claims no longer read on a product of nature.

## **III. INDEFINITENESS REJECTION**

On page 3 of the Action, claims 7 and 8 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite for "The oral dosage form" and "comprising 2-20 wt% peptides" in claim 7. The Examiner questioned whether the total peptide concentration must be in a range of "2-20 wt%" or whether it is the peptide of claim 1 that must be in this range.

It is respectfully submitted that the present amendment overcomes this rejection for reasons which are self-evident.

#### IV. ANTICIPATION REJECTIONS

On pages 3-4 of the Action, claims 1-6 were rejected under 35 U.S.C. § 102(b) as anticipated by Harris (M.S. Harris, ed. Organ-meats-msg 7/25/2001, [Internet document], accessed 11/30/05, 38 pages, <http://web.archive.org/web/20010725001910/http://www.florilegium.org/files/FOOD-MEATS/organ-meats-msg.text>) in view of Sullivan (K.F. Sullivan et al., J. Biol. Chem. 1986, 2691(28), pages 13317-1332), Uniprot entry TBB\_CHICK (accession number P09206, 3 pages) and Bradsher (K. Bradsher, "Age-old recipe roils new Chinese Disney", 6/20/2005, 2 pages).

The basis for this rejection is that the claims recite "comprising" which is open language, and thus, the claims read on food products, such as animals, which comprise the elected SEQ ID NO: 1.

On page 5, claims 1-6 were rejected under 35 U.S.C. § 102(e) as anticipated by Tang, U.S. 6,743,619.

The basis for this rejection is that the claims recite "comprising" which is open language, and thus, the claims read on a larger polypeptide which comprises elected SEQ ID NO: 1.

These rejections are respectfully traversed as applied to the amended claims.

To anticipate a claim, a cited prior art reference must teach each and every element of the claimed invention. M.P.E.P. § 2131.01.

As noted above, the claims have been amended to "consisting of" format, which is closed language. Accordingly, the amended claims exclude the food products and larger polypeptide disclosed in the prior art. Thus, the cited references fail to teach or suggest each and every element of the claimed invention. For this reason, the above-noted anticipation rejections are untenable and should be withdrawn. Furthermore, as noted during the interview, the present amendment overcomes these rejections.

## **V. OBVIOUSNESS REJECTION**

On pages 6-8, claims 1-8 were rejected under 35 U.S.C. § 103(a) as obvious over Tang, in view of Kamarei, U.S. 5,985,339 and/or Gohman, U.S. 6,511,696.

These rejections are respectfully traversed as applied to the amended claims for essentially the same reasons set forth immediately above.

To establish obviousness, three criteria must be met. First, the prior art references must teach or suggest each and every element of the claimed invention. M.P.E.P. § 2143.03. Second, there must be some suggestion or motivation in the references to either modify or combine the reference teachings to arrive at the claimed invention. M.P.E.P. § 2143.01. Third, the prior art must provide a reasonable expectation of success. M.P.E.P. § 2143.02.

As discussed above, the claims have been amended to “consisting of” format and thereby exclude the food products and larger polypeptide disclosed in the prior art. As such, the cited references fail to teach each and every element of the claimed invention. For

Furthermore, the cited references lack a suggestion to modify the polypeptide in Tang to arrive at the polypeptide of SEQ ID NO: 1.

For this reason, the above-noted obviousness rejection is untenable and should be withdrawn. Furthermore, as noted during the interview, the present amendment overcomes these rejections.

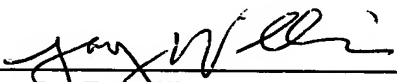
**CONCLUSION**

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

Herbert MOESSLER et al.

By:   
Jay F. Williams  
Registration No. 48,036  
*for*  
Warren M. Cheek, Jr.  
Registration No. 33,367  
Attorneys for Applicants

WMC/JFW/akl  
Washington, D.C. 20006-1021  
Telephone (202) 721-8200  
Facsimile (202) 721-8250  
May 19, 2006